IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1068 of 1993

Ramachandran .. Appellant

-Vs-

Angamuthu Ammal .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 29.6.1993 in A.S.No.20 4/1992 on the file of Sub Court, Cuddalore, confirming the judgment and decree dated 10.6.92 in O.S.No.720/88 on the file of the District Munsif Court, Cuddalore.

!For Appellant : Mr.K.Kannan

^For Respondent : Mr.K.Ranganathan

:JUDGMENT

This second appeal is directed against the judgment of the learned Subordinate Judge, Cuddalore, made in A.S.No.204/92, wherein the judgment of the trial Court in O.S.No.720/88 was affirmed.

2. The respondent herein as plaintiff filed the suit for declaration, recovery of possession and damages, alleging that the suit property originally belonged to the plaintiff's father namely Kaka @ Narayanasamy; that he executed a settlement deed in favour of the plaintiff on 20.11.1942; that the plaintiff took possession of the property and has been paying the tax all along; that during her life time, she executed a Will in favour of Sivaprakasam and Padmavathy; that the defendant was a close relative; that she permitted the defendant to be in occupation of the property in the year 1983, and thus, the defendant has been in possession for the past five years; that the plaintiff wanted the same for her own use; that when a demand was made, the defendant refused to hand over the same, which necessitated the plaintiff to file the suit.

3. The suit was resisted by the defendant stating that he got into possession of the property in the year 1973; that he raised a thatched house and got electricity service connection; that he has been paying the tax and electricity charges also, and thus, he has acquired title to the property by adverse possession, and hence, the suit must be dismissed.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. An appeal by the defendant was also dismissed by the first appellate forum. Hence, this second appeal has been brought forth by the defendant.

5. At the time of admission, the following substantial question of law was formulated by this Court: "Whether the Courts below are right in granting a decree notwithstanding the fact that the plaintiff could not establish her case of permissive possession and notwithstanding the fact that the defendant has established his possession from the year 1973?"

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

7. It is not in controversy that the plaint Schedule mentioned house property originally belonged to one Kaka @ Narayanasamy, the father of the plaintiff; and that he executed a settlement deed in favour of the plaintiff on 20.11.1942, as evidenced by Ex.A1. The specific case of the plaintiff was that considering the fact that the defendant was a close relative, she permitted him to occupy the suit house, and he has been there for five years from 1983 onwards. On the contrary, the defence plea was that he got into possession of the property in the year 1973 itself; that he has been in open, continuous, and uninterrupted possession and enjoyment of the property, and hence, he acquired title by adverse possession. The first appellate Court in extenso has discussed the evidence and has negatived the defence plea and rightly too. In the original written statement, what was averred was that the defendant got into possession of the property in the year 1973. Pending the first appeal, an application for amendment of the written statement was filed, stating that he got into possession of the property in the year 1968; that a mistake has crept in while stating the year as 1973 instead of 1968 in the original written statement, and hence, an opportunity should be given to him to correct the original written statement. The said request was rightly rejected by the first appellate Court. It can be well stated that the attempt by the defendant before the first appellate forum would be indicative of the fact that his alleged possession, even if to be accepted by the Court as one adverse, would fall within the statutory period. However, he has not proved that he was in open, continuous and uninterrupted possession of the property for more than a statutory period of 12 years, as required by law, to accept the plea of adverse possession. The first appellate Court has rightly rejected the said plea. Thus, both the Courts below have recorded a concurrent finding in favour of the plaintiff that the plaintiff was entitled to the property; that on permission, the defendant was put in possession, and hence, the defence plea of adverse possession was not only misconceived, but also unsustainable. Therefore, this Court is unable to notice anything to disturb the concurrent findings of the Courts below.

8. For the foregoing reasons, this second appeal deserves to be dismissed, and it is, accordingly, dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

To:
1. The Subordinate Judge Cuddalore.
2. The District Munsif Cuddalore
3. The Record Keeper V.R. Section High Court, Madras.

nsv/